Supreme Court, U.S.
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No. 95-1723

In The

Supreme Court of the United States

October Term, 1996

TOM GRIMMETT, AS TRUSTEE FOR THE BANKRUPTCY ESTATE OF VINCENT SIRAGUSA, and JOANNE SIRAGUSA,

Petitioners,

v.

PATRICIA L. BROWN, PATRICIA L. BROWN, LTD., and BECKLEY, SINGLETON, DELANOY, JEMISON & LIST, CHTD.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENTS BECKLEY, SINGLETON, DELANOY, JEMISON & LIST, CHTD.

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SUMMARY OF ARGUMENT

The first question presented is:

Whether a civil RICO action accrues prior to the conclusion of the bankruptcy proceedings where the defendants' unlawful scheme is based on fraudulently obtaining a discharge of a pre-existing debt and where plaintiff may suffer no injury until the final discharge in bankruptcy.

This question is moot and, indeed, the entire case is moot because Joanne and the trustee have settled with Vincent, and one of the terms of settlement is the revocation of the discharge in bankruptcy.

The second question presented is:

Whether a civil RICO action accrues when the plaintiff knows or should know that she has been injured, even though she does not know that her injury was part of a pattern of racketeering activity or that defendants caused her injury.

The injury discovery rule affords four years for the injured person to discover any pattern that may exist and the identity of the defendants. This rule encourages and rewards diligence and prevents injustice which can result from stale claims, faded memories and lost evidence.

The pattern discovery rule could result in a 14-year statute of limitations. *Rodriguez v. Banco Central*, 917 F.2d 664, 667 (1st Cir. 1990) (if the last predicate act of the pattern is committed ten years from the date of the first predicate act and the four-year statute of limitations starts to run at that time). This cannot be reconciled with this Court's determination that there was a need for a

uniform statute of limitations lest the memory of witnesses fade or evidence be lost. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 156 (1987).

ARGUMENT

I.

THE CASE IS MOOT

It is the duty of all counsel to call to the Court's attention facts which might conceivably indicate that the case has been rendered moot. This action is necessary so that the Court may not unknowingly exercise its authority in cases in which it no longer has jurisdiction. *Board of License Commissioners of Tiverton v. Pastore*, 469 U.S. 238 (1985).[1]

Respondent Beckley, Singleton, DeLanoy, Jemison & List, Chtd. ("Beckley") suggests that in June 1994 Tom Grimmett, as Trustee for the Bankruptcy Estate of Vincent Siragusa, and Joanne Siragusa ("Joanne") settled with Vincent Siragusa ("Vincent" or "Dr. Siragusa"). One of the terms of this settlement was the revocation of the discharge in bankruptcy of Vincent. *See*, section 7(E)(2) of the settlement documents attached to the affidavit of George Foley, Jr. App. 21.

[1] Similarly, where there is no actual case or controversy, the parties may not have sufficient interest in the dispute to raise such arguments as would assist the court in resolving the issue supposedly presented.

That this fact renders the action moot is seen from two concessions made in Petitioners' brief. There, Joanne first abandons her principal claim for damages, *i.e.*, for interference with her lien rights. She now claims only her "marital payments." She then concedes that she has not been injured and will not be injured unless Vincent is granted a final discharge in bankruptcy. Brief for Petitioners at 10.

As the bankruptcy court has revoked Vincent's discharge, she cannot have been injured. Under Joanne's own analysis, this case is moot.

A. JOANNE HAS ABANDONED THE CLAIM FOR DAMAGES BASED UPON INTERFERENCE WITH HER LIEN RIGHTS

Joanne brought a RICO claim for $6 million in current damages for impairment of her lien rights. (Joanne's complaint, paragraph 101, part B; Joint Appendix at 70.) Liens constitute property. *See, Matagorda County v. Russell Law*, 19 F.3d 215 (5th Cir. 1994). Accordingly, she brought a RICO claim as a "person injured in his business or property. . . . " 18 U.S.C. § 1964(c).

Joanne has now abandoned this claim, however. Her present claim is only for the marital payments. Joanne apparently now recognizes that her claim of $6 million in damages to her lien claims was untenable.

Indeed, basing a RICO claim upon the dispute involving this divorcing couple was untenable, as the facts reveal. Vincent was a partner in three entities. Heart Institute Property ("HIP") was a partnership which

owned the medical building in which Vincent and others practiced. Vincent had an interest of 27.55%. *See*, Joint Appendix at 27. Heart Institute Cath Lab ("HICL") was a partnership of Drs. Siragusa, Bowers and Heeren in which each owned one-third. This partnership owned the personal property utilized in the practice of medicine. *See*, Joint Appendix at 26. Heart Institute of Nevada ("HIN") was the vehicle used for the actual practice of medicine. *See*, Joint Appendix at 25. The assets of this partnership were the accounts receivable and personal good will of each doctor consisting of their individual patient following. Each doctor had a one-third interest in this partnership.

Vincent transferred his interest in HIP and HICL to Drs. Bowers and Heeren. Joint Appendix at 26, 27. Joanne was compensated for her liens by the payment of $1.4 million by Dr. Bowers. This case focused on HIN.

Vincent's interest in HIN had two very different values. For purposes of divorce in calculating alimony and community property values, a doctor's personal good will has a value. *Ford v. Ford*, 105 Nev. 672, 679, 782 P.2d 1304, 1309 (Nev. 1989). Vincent's good will would have great value because of his great earning capacity. *See*, Joint Appendix at 30.

However, a doctor's personal good will is not an asset in bankruptcy. The doctor retains his personal good will in bankruptcy free and clear of the claims of a creditor. *In re Cooley*, 87 B.R. 432 (Bkrtcy. S.D. Tex. 1988); *In re Molina Y Vedia*, 150 B.R. 393 (S.D. Tex. 1992). For this

reason the bankruptcy estate was smaller than the community property estate. Joanne's lien on HIN would only attach to the accounts receivable.

Vincent then entered into an employment contract with Cardiology Associates of Nevada ("CAN"), a new corporation formed by Drs. Bowers and Heeren.

Joanne, however, was dismayed to see that Vincent was earning as much money as an employee of CAN as he had earned as a partner in HIN. *See*, Joint Appendix at 203. There is no reason why Vincent should not earn the same amount. He brought to CAN the same good will, services and patient following that he had brought to the HIN partnership. These assets were free and clear of the claims of the trustee in bankruptcy. Joanne asserted the novel theory that, if she had been allowed to foreclose against HIN, she could have operated the medical partnership and generated $6 million in profits. Joanne's complaint, paragraph 101, part B; Joint Appendix at 70.

Joanne has now abandoned any such claims.

B. THE CLAIM FOR MARITAL PAYMENTS IS MOOT

Joanne's only remaining claim is for "marital payments."[2] The RICO theory of liability is based on the assumption that Joanne's debt was lost by a discharge of that liability obtained through bankruptcy fraud. Joanne explains that a necessary prerequisite to RICO liability is the final discharge of Vincent. Brief for Petitioners at 10. Because of the settlement agreement, this cannot occur.

On September 23, 1983, the Nevada state court entered a decree of divorce which incorporated Vincent and Joanne's property settlement agreement. The facts stated in this and in the following two paragraphs come from *Siragusa v. Siragusa*, 108 Nev. 987, 843 P.2d 807 (Nev. 1992). That agreement provided that Vincent would make alimony payments of $3,000 per month for 60 consecutive months, commencing August 19, 1983. The agreement also provided that Vincent would purchase Joanne's community property interest in Vincent's medical practice for the sum of $1,250,000, to be paid over 15 years in increasing monthly installments.

By mid-1987, however, Vincent had fallen into default on both the alimony and property settlement obligations. On November 5, 1987, the Nevada state court

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[2] All that remains is her claim for the first item of damage alleged by Joanne:

> A. The failure to receive the Marital Payments and all other rights and interests to which Joanne was properly entitled under the Decree of Divorce.

[Joint Appendix at 70.]

orally announced it would enter judgment in favor of Joanne in the amount of $1,300,000 in property settlement arrearages. Vincent petitioned for bankruptcy protection, seeking a discharge from the property settlement obligation.

On August 31, 1990, Joanne filed a petition in Nevada state court to modify the alimony provisions of the parties' divorce decree. Although Vincent had paid all of the alimony due under the original decree, the court awarded new alimony of $7,500 per month to compensate Joanne for the discharged property settlement obligation of $1.3 million. This order was affirmed by the Nevada Supreme Court, *Siragusa v. Siragusa, supra.*

By the time the bankruptcy court approved the settlement in August 1994, Joanne had received $1.4 million for her lien claims, which Joanne acknowledges is an offset. Joint Appendix at 70. Joanne would also have received alimony (to compensate her for the loss of community property division) at the rate of $7,500 a month from August 1990 to August 1994 in the amount of $360,000. Joanne would also receive $160,000 in the settlement agreement. Settlement agreement at section 7(C)(2). Joanne also received all Vincent's residual rights in the bankruptcy estate. Settlement agreement at section 7D. If this does not fully compensate Joanne, it would not be because Vincent obtained a final discharge in bankruptcy, but rather because Vincent was in poor health and had limited financial resources to pay his obligations. Settlement Agreement at section J. App. 12-13.

For these reasons, the Court should set aside the decree below and remand the cause with directions to

dismiss. *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

II.

BRIEF ON THE MERITS

A. THE ACTION ACCRUED MORE THAN FOUR YEARS PRIOR TO THE FILING OF THE COMPLAINT

Analyzing Joanne's complaint is an arduous task. Joanne utilized a pleading style which has been condemned by two circuits. In *Hartz v. Friedman*, 919 F.2d 469, 471(7th Cir. 1990), the court indicated that it might well have dismissed the plaintiff's complaint on the ground that it was an egregious violation of Rule 8(a) of the Federal Rules of Civil Procedure in that the complaint contained 125 pages, including a mass of detail which might have been relevant at an appropriate trial but which was clearly surplusage in stating a claim. The court noted that the volume and form of the pleading made it difficult to sort out the necessary elements of a RICO claim.

A similar pleading was condemned by the court in *Pelletier v. Zwiefel*, 921 F.2d 1465, 1517-18 (11th Cir. 1991). In that case the court concluded that the manner in which plaintiff pleaded his case buttressed the court's conclusion that the suit was brought purely to harass the defendants. The court noted that the pleading style required the court to sift through the facts presented and decide for themselves which were material to the particular cause of action, a difficult and laborious task. On page 1522 the court concluded that the plaintiff had utilized

the complaint to "shake down his opponent" with the expenses of defending a RICO charge to extort a settlement.

After reviewing Joanne's complaint, the court made two conclusions:

First, Joanne knew of her injury in May 1989 when she filed her adversary complaint in the bankruptcy court.

Second, four years before the filing of the present action in November 1993, the pattern existed although Joanne did not know of the existence of the pattern until December 1990.

The pattern existed more than four years prior to the filing of the complaint in November 1993. This fact is shown by Joanne's complaint at 180-81 in the Joint Appendix. There, Joanne alleges that Pat Brown utilized telephone and mail service to accomplish the fraud involved in the Heeren stock sale over the period May 29, 1987 to October 27, 1989.

In the Joint Appendix at 180 Joanne asserts that Pat Brown utilized the mail services as described in Exhibit 2 which asserts that mail fraud was utilized from June 29, 1987 to March 3, 1988. Joint Appendix at 159. Also, on page 180 of the Joint Appendix, Joanne relies upon interstate telephone calls described in Exhibit 3. These calls were described in Joint Appendix at 160 and occurred at various times in 1987 and 1988.

The latest time referred to in the complaint regarding the Heeren stock sale fraud was October 27, 1989. Joint Appendix at 182. Thus, it appears that the requisite pattern existed no later than October 27, 1987 and that more than four years elapsed before the filing of the complaint in November 1993.

Petitioners and *amici* assert that the Ninth Circuit rule is illogical because the statute of limitations can run before the cause of action accrues. This is not the Ninth Circuit rule. The court made this clear in *Grimmett v. Brown*, 75 F.3d 506, 512 (9th Cir. 1996). There the court stated that a RICO cause of action cannot accrue until all the elements exist and the statute of limitations cannot begin to tick until a pattern exists. The pattern consisted of many predicate acts involving the claimed bankruptcy fraud and the claimed Heeren stock sale, which existed over the period of 1987 through 1989.

B. THE "INJURY DISCOVERY" RULE BETTER SERVES THE INTERESTS BEHIND BOTH THE RICO ACT AND STATUTES OF LIMITATIONS

The injury discovery rule is consistent with the purpose behind statutes of limitation. Statutes of limitations promote justice by prompting litigants to be diligent. As claims grow old, evidence is lost, witnesses disappear, and recollections fade. *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944). The court's own fact-finding process is hobbled. Defendants face revived claims from which exculpatory

evidence is more difficult to accumulate.[3] Thus, a statute of limitations promotes a common moral sense that valid claims should be brought quickly. Establishing a time bar for stale claims reduces the risk of false claims, which increase in number as the facts at issue become more remote. *Riddlesbarger v. Hartford Ins. Co.*, 74 U.S. 386, 390 (1886). Outdated cases also place a heavy burden on the court system. *Burnett v. New York Cent. R.R.*, 380 U.S. 424, 428 (1965). Simply put, a statute of limitations limits the time period in which a plaintiff may bring his cause of action. Thus, statutes of limitation prompt plaintiffs to be diligent in bringing their claims.

Requiring plaintiffs to be diligent in discovering the pattern will also serve the purpose of RICO. The "declared purpose" of Congress in enacting the RICO statute was "to seek the eradication of organized crime in the United States." *United States v. Turkette*, 452 U.S. 576, 589 (1981).[4]

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[3] Facing potential liability unsettles defendants and disrupts the orderly operation of society and the flow of commerce. *Gates Rubber Co. v. USM Corp.*, 508 F.2d 603, 611 (7th Cir. 1975).

[4] Organized crime had been infiltrating and taking control of legitimate businesses to siphon billions of dollars out of the economy through corrupt means. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 1, 84 Stat. 922 (1970) (Statement of Findings and Purpose). In an effort to remedy the growing problems caused by organized crime, Congress enacted the Racketeer Influenced and Corrupt Organizations Act (the "Act"). *See* 18 U.S.C. §§ 1961-1968 (1994).

The civil RICO section of the Act had three main purposes: (1) to afford victims of organized crime some opportunity at compensation for their injuries (2) to deter future organized

The crime organizations always have pattern and continuity. They are engaged in the business of crime. This "comes almost by definition." *Hindes v. Castle*, 937 F.2d 868, 874 (3d Cir. 1991). The pattern is there, the plaintiff must find the proof. Congress has commissioned the injured plaintiff as a private attorney general or, more accurately, as a bounty hunter to bring civil actions to eradicate organized crime. The bounty offered is not a gift. It must be earned.

Those injured by organized crime are encouraged to investigate and discover RICO violations. An injured plaintiff who is diligent will file a common law tort action to vindicate his injury.

If the injury was committed by an organized crime family and the plaintiff fails to discover the pattern within the four years allowed, the plaintiff has simply failed to earn the bounty. If the injury was committed by an ordinary criminal who had not yet attained the status of a statutory racketeer under RICO, then the statute of limitations may bar a RICO action. However, no violence is done to the Congressional plan. The ordinary criminal was not the target of the Act and is only an incidental player. *See*, the legislative history reported by Justice

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crimes and (3) to undermine the social and economic power of organized crime. *See* Organized Crime Control: Hearing before Subcomm. No. 5 of the Comm. on the Judiciary, House of Representatives, 91st Cong., 2nd Sess. 520 (1970). To accomplish these objectives, Congress equipped the Act with a treble damages remedy, forfeiture of assets for criminal violations of RICO provisions, nationwide service of process, expedition of actions, and a civil investigative demand. *See* 18 U.S.C. §§ 1963, 1964(c), 1965(b)-(d), 1966, 1968 (1994).

Powell in his dissent in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 525 (1985). The ordinary criminal will still be liable for the common law tort for which punitive damages may be assessed. When the ordinary criminal commits enough predicate acts to become a statutory racketeer, the person then injured by his action may rely upon the past predicate acts to obtain a RICO recovery.

The adoption of the injury and pattern discovery rule, in contrast, would allow a plaintiff, even though he is aware of the injury and the predicate act which caused it, to slumber on his rights without investigating whether the defendant has committed a pattern of racketeering activity. Such an interpretation does not serve the purposes of the RICO Act, and it makes for an inappropriate statute of limitations.[5] In *Rodriguez v. Banco Central*, 917 F.2d 664, 667 (1st Cir. 1990), the court noted that the pattern discovery rule could result in a 14-year statute of limitations and observed that such a rule would be difficult to reconcile with this Court's determination that there was a need for a uniform statute of limitations for civil RICO lest the memories of witnesses fade or evidence be lost. *Agency Holding Corp. v. Malley-Duff Associates, Inc.*, 483 U.S. at 156, quoting *Wilson v. Garcia*, 471 U.S. 261, 271 (1985).

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[5] This analysis demonstrates petitioners' misplaced reliance on *United States v. Kubrick*, 444 U.S. 111 (1979). There, the Court held that a Federal Tort Claim Act cause of action accrues "when the plaintiff knows both the existence and the cause of his injury." That is the situation here. By May 1989, Siragusa knew of both her injury and the predicate act which caused the injury.

Adoption of the injury discovery rule will also assist in preventing the civil RICO action from being used outside its intended purposes. It is an unfortunate reality that organized crime accounts for only 9% of RICO cases. *See Sedima, supra,* 473 U.S. at 506. The Act's incentives – treble damages, attorney's fees, nationwide service of process, expedition of actions and a civil investigative demand[6] – make it alluring to any plaintiff. RICO charges are also often brought to harass defendants and extort a settlement from them. *Pelletier v. Zwiefel, supra,* 921 F.2d at 1517. This Court also has noted the potential for extortion. *Sedima, supra,* at 473 U.S. 506.

CONCLUSION

The settlement between Joanne, the trustee and Vincent has made the present action moot because the parties have stipulated to revoke Vincent's discharge in bankruptcy. Accordingly, the case should be dismissed as moot.

[6] *See* 18 U.S.C. §§ 1963, 1964(c), 1965(b)-(d), 1966, 1968 (1994).

The injury discovery rule encourages diligence and protects against injustice from faded memories and lost evidence and is the appropriate rule.

Respectfully submitted,

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No. 95-1723

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

TOM GRIMMETT, AS TRUSTEE FOR THE BANKRUPTCY ESTATE OF VINCENT SIRAGUSA AND JOANNE SIRAGUSA, Petitioners

v.

PATRICIA L. BROWN, PATRICIA L. BROWN, LTD., AND BECKLEY, SINGLETON, DELANOY, JEMISON & LIST, CHTD., Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AFFIDAVIT OF GEORGE FOLEY, JR.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

Affiant, George Foley, Jr. being first duly sworn, deposes and states on his own personal knowledge of facts as follows:

1. Affiant was counsel for Respondent BECKLEY, SINGLETON, JEMISON & LIST, CHTD., in the United States Bankruptcy Court for the District of Nevada, adversary proceeding, Case No. S-89-0068, also number S-89-2068.

2. Affiant attempted to review the above entitled Adversary Proceeding file at the Office of the Bankruptcy

Court Clerk in Las Vegas, Nevada for purposes of obtaining certified copies of the documents attached hereto. Affiant was informed by the Clerk that the above file has been closed and the file has been sent to the Bankruptcy Court's archives facility. The original file cannot be retrieved in time to obtain certified copies to attach to Respondent's Brief.

3. As counsel for BECKLEY, SINGLETON, JEMISON & LIST, Affiant was served in said adversary proceeding with a copy of MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT AGREEMENT AND GOOD FAITH DETERMINATION WITH DEBTOR DEFENDANTS; AND SUPPORTING POINTS AND AUTHORITIES, a true and correct copy of which is attached hereto as Exhibit "A". Affiant certifies that Exhibit "A" is a true and correct copy of the actual document that was served on Affiant in said action and which is contained in Affiant's file in the above case.

4. As counsel for BECKLEY, SINGLETON, JEMISON & LIST, Affiant was served in said adversary proceeding with a copy of ORDER GRANTING MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT AGREEMENT AND MAKING GOOD FAITH DETERMINATION WITH DEBTOR DEFENDANTS ONLY, a true and correct copy of which is attached hereto as Exhibit "B". Affiant certifies that Exhibit "B" is a true and correct copy of the actual document that was served on Affiant in said action and which is contained in Affiant's file in the above case.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ George W. Foley
GEORGE W. FOLEY, JR.

SUBSCRIBED AND SWORN to before me
this 11 day of October, 1996.

/s/ Dineen M. Bergsing
NOTARY PUBLIC

[SEAL]
OFFICIAL SEAL
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EXHIBIT "A"

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re: VINCENT SIRAGUSA, Debtor.	)	BK-S-87-3085-LBR Chapter 7
JOANNE M. SIRAGUSA individually and ex rel TOM GRIMMETT, Trustee, Plaintiff, v. VINCENT SIRAGUSA; et al, Defendants. And Related Counter And Crossclaims	)	ADVERSARY PROCEEDING NO. S-89-0068

TOM GRIMMETT, Trustee of the Bankruptcy Estate of VINCENT SIRAGUSA, Plaintiff, v. JOHN BOWERS; et al, Defendants.	)	ADVERSARY PROCEEDING NO. S-90-0216

MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT AGREEMENT AND GOOD FAITH DETERMINATION WITH DEBTOR DEFENDANTS ONLY; AND SUPPORTING POINTS AND AUTHORITIES

Hearing Date: August 12, 1994
Hearing Time: 9:30 am

Trustee Tom Grimmett, Joanne M. Siragusa, debtor and V. Siragusa MD Chtd move this court for (i) approval of a compromise and settlement agreement between the trustee and Joanne M. Siragusa on one hand and debtor and V. Siragusa MD Chtd only (collectively the "Debtor Defendants") on the other hand and (ii) a determination that this compromise and settlement agreement is in "good faith". This motion is based on the supporting points and authorities, the arguments of counsel to be presented at the hearing hereon, and the entire record herein.

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SUPPORTING POINTS AND AUTHORITIES

The trustee and Joanne M. Siragusa have filed the above captioned adversary proceedings herein against the Debtor Defendants and various others (the "remaining Defendants") based on various claims for relief as set forth more fully in the pleadings filed therein. Joanne M. Siragusa also has various other marital claims against the

debtor which are the subject of proceedings in various other courts.

After first giving due consideration to the respective positions of the parties, the uncertainties and expenses of the Adversary Proceedings, the benefits of this Agreement to the parties, and, in the case of the trustee and Joanne M. Siragusa, the potential ability to obtain the rest of the damages to which the trustee and Joanne Siragusa believe they are properly entitled for the actions which are the subject of the Adversary Proceedings from the Remaining Defendants and others, the trustee and Joanne M. Siragusa have agreed to compromise and settle their respective claims with the Debtor Defendants only on the terms set forth in the Settlement Agreement and Mutual Release attached as Exhibit "A", subject to the approval and determinations by this court set forth in Section 8 thereof. The basic monetary terms of this settlement and compromise are that the Debtor Defendants will (i) pay the trustee and Joanne M. Siragusa $200,000 in cash, though the full Agreement should be consulted for the precise and complete terms.

The trustee and Joanne M. Siragusa believe that this compromise and settlement are in the best interests of this estate and that this court should grant:

1. The requested approval pursuant to Bankruptcy court rule 9019 based upon the overall facts and circumstances of this case with which this court is familiar.

2. The requested "good faith" determination that:

A. The Releases do not discharge or in any manner impair the Plaintiffs' claims for relief in the

Adversary Proceedings, or any other claims, against the Remaining Defendants.

B. The Releases discharge the Settling Defendants from contribution to any of the Remaining Defendants, and the Dismissed Defendants, based upon the following authorities:

C. NRS 17.245 and *Velsicol Chemical Corp., v. Davidson*, 811 P2d 561 (Nev, 1991) broadly construing the trial court's discretion to make a good faith determination under that statute.

D. *Avery v. US*, 829 F2d 817 (9th Cir, 1987) which holds that release of one joint tortfeasor does not release the others absent an agreement to that effect.

E. *First Fed S&L v. Oppenheim, et al*, 631 F Supp 1029 (SDNY, 1986) whose rationale would make Nevada the proper state contribution law to apply.

F. *Wieboldt Stores, Inc. v. Schottenstein*, 111 BR 162 (ND Ill, 1990) which holds that there are no express or implied rights to contribution in bankruptcy fraudulent conveyance actions.

SHINEHOUSE & DUESING

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and Vincent Siragusa, MD, Ltd.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made by and among the following parties with respect to the following underlying facts:

The Parties

A. (a) Tom Grimmett as the trustee (the "Trustee") in the Chapter 7 bankruptcy case for Vincent Siragusa as debtor (the "Debtor") filed in the United States Bankruptcy Court for the District of Nevada as Case Number BK-S-87-3085-LBR (the "Bankruptcy"), (b) Vincent Siragusa, MD, Ltd, a Nevada corporation wholly owned by Trustee ("Vincent Ltd"), and (c) Joanne M. Siragusa, individually and ex rel the Trustee in Adversary Proceeding Number 89-0068 ("Joanne") as one party (collectively "Plaintiffs"); and

B. (a) Vincent Siragusa ("Vincent") and (b) V. Siragusa, MD, Chartered ("Vincent Chtd") ("HICL") (jointly and severally as among themselves the "Settling Defendants") as another party; and

The Underlying Facts

C. On August 19, 1983, Joanne and Vincent as spouses entered into a Property Settlement Agreement which was subsequently incorporated and merged into a Decree of Divorce entered by the Nevada Eighth Judicial District Court in Case No. D58232 (the "Divorce Proceedings") on September 23, 1983. This Agreement and Decree were subsequently amended by various stipulations of the parties through January 1987.

D. On November 10, 1987, Vincent filed his Bankruptcy.

E. Joanne has since filed and amended a proof of claim against the Bankruptcy Estate in the Bankruptcy (the "Proof of Claim").

F. The Trustee (in his own such capacity and as the owner of Vincent Siragusa, MD, Ltd) and Joanne have also since filed certain claims in the following adversary proceedings in the Bankruptcy (collectively the "Adversary Proceedings") against the Settling Defendants herein and various others (the "Dismissed Defendants" and the "Remaining Defendants"):

1. Adversary Proceeding Numbers 89-0068 and 90-0216.

2. The Dismissed Defendants: (a) John A. Bowers ("Bowers"), (b) Heart Institute of Nevada, a Nevada joint venture ("HIN") formerly dba Cardiology Associates of Nevada, (c) Cardiology Associates of Nevada, Bowers, McMahon, More, Steljes, Thomas, and Uhl, Ltd., a Nevada corporation dba Heart Institute of Nevada (and the successor to Cardiology Associates of Nevada, Bowers, More, Thomas, and Uhl, MD's, Ltd. and also Cardiology Associates of Nevada, John A. Bowers, MD, Ltd.) ("CAN"), (d) Heart Institute Property, a Nevada partnership ("HIP") and (e) Heart Institute Cath Lab, a Nevada sole proprietorship of John A. Bowers (and the successor to Heart Institute Cath Lab, a Nevada partnership).

3. The Remaining Defendants: (i) Patricia L. Brown, (ii) Patricia L. Brown, Limited, (ii) Beckley, Singleton, DeLancy, Jemison, & List, Chtd., (iii) Paul Heeren, (iv) Paul Heeren, MD, Ltd, (v) their respective associates, employees, shareholders, heirs, successors or assigns, and (vi) any additional persons and entities which may subsequently be specifically named as "Does" in the Adversary Proceedings (other than the Settling Defendants).

G. Joanne has also since moved in the Divorce Proceedings to modify the alimony provisions of the Divorce Decree and reduce Vincent's alimony obligation arrearages thereunder to judgment, which has resulted in a significantly increased set of alimony obligations for Vincent (the "Modified Alimony Obligations").

H. Vincent has appealed from the Modified Alimony Obligations, including appeals which are still pending (i) in the Nevada Supreme Court as Case No. 22043 and (ii) in the Ninth Circuit Court of Appeals as Docket No. 91-16788 (collectively the "Alimony Appeals").

I. The Trustee and Joanne have filed RICO and other claims against certain of the Remaining Defendants, but not the Settling Defendants, in Nevada state and federal district courts (collectively, together with any other cases involving these same matters, the "Rico Actions").

J. Vincent has warranted and represented to Plaintiffs that he (Vincent) currently is in poor health and has limited financial resources and capabilities with which to satisfy his Modified Alimony Obligations and any other

obligations which may arise out of any of the above described litigation against him.

K. The parties wish to:

1. Fully, finally and completely resolve and settle in good faith as between themselves any and all matters and disputes, whether known or unknown and whether matured or unmatured, relating to or raised by the facts alleged or the matters referred to in the Proof of Claim and the various pleadings and papers filed by the parties in the Adversary Proceedings, the Divorce Proceedings (including the Modified Alimony Obligations), the Alimony Appeals, the Rico Actions, or otherwise.

2. Expressly reserve any and all such other matters and disputes which each may have or purport to have against the Remaining Defendants and the Bankruptcy Estate.

Accordingly, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. The foregoing recitals are herein incorporated by reference.

2. Each party enters into this Agreement with the intention of binding such party and that party's various heirs, successors, assigns, attorneys, agents and all others who may claim under, through or in connection with that party (all of which are sometimes collectively referred to as the "related persons and entities" of that party) to, and agrees to:

A. Comply with each and all of the entering party's Express Obligations hereunder as well as the

Additional Provisions and other provisions contained herein; and

B. Accept compliance by each other party hereunder with each and all of that other party's Express Obligations and the Additional Provisions hereunder in full, final and complete satisfaction of any and all obligations which might otherwise exist from that obligated party.

3. Neither the execution nor the performance of this Agreement by any party shall constitute or be deemed to be an admission of:

A. Any liability, wrongdoing or impropriety on the part of that party, or any lack of merit in the claims or defenses of that party. Rather, such execution and performance are intended to in good faith compromise and fully, finally and completely resolve and settle the matters and disputes which are the subject of this Agreement. Without limiting the generality of the foregoing:

(1) With respect to Vincent, such execution and performance, and any Court Approval and Court Determination, of this Agreement shall not (i) constitute an admission or finding of any fraud or other wrongdoing or (ii) be used by anyone, including without limitation the Plaintiffs and the Remaining Defendants, in any judicial proceeding to support any such admission or finding.

(2) With respect to Joanne, such execution and performance, and any Court Approval and Court Determination, of this Agreement shall not (i) constitute an admission or finding of any lack of fraud or other

wrongdoing or (ii) be used by anyone, including without limitation the Settling and Remaining Defendants, in any judicial proceeding to support any such admission or finding.

B. The adequacy of the consideration provided for herein to fully compensate the Trustee (in his own such capacity and as the owner of Vincent Siragusa, MD, Ltd) and Joanne for any or all such matters and disputes, including without limitation their various claims for relief in the Adversary Proceedings, the Rico Actions, and Joanne's Proof of Claim. However, while Plaintiffs believe and contend that the consideration provided for herein is not adequate to fully compensate Plaintiffs for all of the damages to which Plaintiffs are properly entitled under the Adversary Proceedings, the Rico Actions, and Joanne's Proof of Claim, the parties have entered into this Agreement in good faith under the Nevada Contribution among Joint Tortfeasors Act and other comparable applicable law after first giving due consideration to the respective positions of the parties, the uncertainties and expenses of the litigation involving them, the benefits of this Agreement to the parties, and, in the case of Plaintiffs, the potential ability to obtain the rest of the damages to which Plaintiffs are properly entitled from the Remaining Defendants and others.

C. Any intention by any party to in any manner resolve, settle, release, discharge or impair to any extent any or all matters and disputes which each may have or purport to have against the Remaining Defendants and any others who are not parties to this Agreement. To the

contrary, each party expressly reserves any and all matters and disputes which each may have or purport to have against the Remaining Defendants and such others.

4. Plaintiffs, and each of them, expressly forever release and discharge (the "Releases") the Settling Defendants, and each of them, together with their respective related persons and entities, (but not the Remaining Defendants or any others) from any and all claims, causes of action, demands, judgments and executions under the laws of any jurisdiction, state or federal, which Plaintiffs, or any of them, have ever had, or now have, or may have, whether known or unknown and whether matured or unmatured, or that anyone claiming through or under Plaintiffs, or any of them, may have, or claim to have, against the Settling Defendants, and each of them, and their respective related persons and entities, including without limitation any claims or issues relating to or raised by the facts alleged or the matters referred to in the various pleadings and papers filed by the parties in the Adversary Proceedings, the Divorce Proceedings (including the Modified Alimony Obligations), the Alimony Appeals, the Rico Actions, or otherwise (collectively the "Claims"); provided that:

A. The Releases shall extend and operate with respect to any and all potential Claims by Plaintiffs, and each of them, against all present and prior attorneys, accountants and other advisors for the Settling Defendants, and each of them, except that the Releases shall not extend to or operate in favor of, or be, in any manner or to any extent, deemed to extend to or operate in favor of: (i) Patricia L. Brown, (ii) Patricia L. Brown, Limited, (iii) Beckley, Singleton, DeLanoy, Jemison, & List, Chtd., or

(iv) their respective associates, employees, shareholders, heirs, successors or assigns.

B. The Releases by Joanne shall not extend or operate with respect to any claims by Joanne against the Bankruptcy Estate, including without limitation Joanne's Proof of Claim, all of which such claims by Joanne shall survive against the Bankruptcy Estate.

C. The Express Obligations created by, and the Additional Provisions of, this Agreement shall survive the Releases.

5. The Settling Defendants, and each of them, expressly forever release and discharge (the "Releases") Plaintiffs, and each of them, (but not the Remaining Defendants or any others) together with their respective related persons and entities, from any and all claims, causes of action, demands, judgments and executions under the laws of any jurisdiction, state or federal, which the Settling Defendants, or any of them, have ever had, or now have, or may have, whether known or unknown and whether matured or unmatured, or that anyone claiming through or under the Settling Defendants, or any of them, may have, or claim to have, against Plaintiffs, and each of them, and their respective related persons and entities, including without limitation any claims or issues relating to or raised by the facts alleged or the matters referred to in the various pleadings and papers filed by the parties in the Adversary Proceedings, the Divorce Proceedings (including the Modified Alimony Obligations), the Alimony Appeals, the Rico Actions, or otherwise (collectively the "Claims"); provided that:

A. The Releases shall extend and operate with respect to any and all potential Claims by the Settling Defendants, and each of them, against all present and prior attorneys, accountants and other advisors for Plaintiffs, and each of them, except that the Releases shall not extend to or operate in favor of, or be, in any manner or to any extent, deemed to extend to or operate in favor of: (i) Patricia L. Brown, (ii) Patricia L. Brown, Limited, (iii) Beckley, Singleton, DeLanoy, Jemison, & List, Chtd., or (iv) their respective associates, employees, shareholders, heirs, successors or assigns.

B. The Express Obligations created by, and the Additional Provisions of, this Agreement shall survive the Releases.

6. Each party hereby waives for that party (and that party's related persons and entities) any and all rights under the provisions of Section 1542 of the California Civil Code, and of any similar rule of law adopted by statute or otherwise in the State of Nevada, and acknowledges that such party is familiar with, has been advised by such counsel as such party desires regarding the significance of, and understands the provisions of Section 1542 which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. The Express Obligations of the parties hereunder are:

A. Each party shall indemnify and hold harmless each other party (and the related persons and entities of each such other party) from any and all claims, demands, liabilities, harm or loss (including without limitation attorneys fees and costs) arising out of or in connection with the breach by that party of the following warranties and representations (the "Warranties and Representations") which shall survive the execution and performance of this Agreement:

(1) Each party warrants and represents that such party has not heretofore assigned or transferred (or purported to have assigned or transferred), and that such party will not hereafter assign or transfer (or purport to assign or transfer), to any other person or entity any of the Claims Released hereunder.

(2) Each party has the full and complete authority to enter into and perform such party's obligations under this Agreement.

(3) The above incorporated recitals concerning Vincent's currently impaired physical and financial condition.

B. Each party agrees to (i) cooperate in promptly requesting the Court Approval and Court Determination described herein and (ii) upon such Court Approval and Court Determination becoming Final as described herein, shall forthwith fully and completely comply with and perform the following additional Express Obligations as applicable to that party.

C. The Settling Defendants shall promptly pay $200,000 as follows (the "Settlement Payments"):

(1) $40,000 to the Trustee for the benefit of the Bankruptcy Estate towards its claims in the Adversary Proceedings.

(2) $160,000 to Joanne towards Vincent's Alimony Obligations which shall have not accrued by the date the Court Approval and Court Determination become Final. Neither this $160,000 payment to Joanne, nor any Release nor anything else contained in this Agreement, shall be deemed to in any manner forgive or offset any of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final. To the contrary, Vincent shall also be obligated to pay to Joanne all of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final in addition to this $160,000 payment to Joanne.

D. Vincent shall execute and deliver to Joanne an irrevocable assignment of all of Vincent's right, title and interest as debtor to receive any and all distributions from his Bankruptcy Estate, including without limitation the debtor's rights to receive any distributions under Bankruptcy Code Section 726(a)(6) (the "Residual Assignment") in the form attached as Exhibit "1".

E. Each party shall dismiss with prejudice each and all of its respective Claims against each other in the Adversary Proceedings, The Divorce Proceedings (including the modified Alimony Obligations, the Alimony Appeals, the Rico Actions, or otherwise (the "Dismissals"); provided that:

(1) The Dismissals shall be joined in by each party to each such case as applicable (with each such party to bear its own fees and costs) so that all defenses and appeals as well as affirmative claims shall be dismissed, including without limitation the benefits of any judgments, orders or decrees which may otherwise result up to the filing of all such Dismissals; provided further that nothing in this Agreement shall be deemed to in any manner forgive or offset any of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final.

(2) The Dismissal in Adversary Proceeding Number 89-0068 shall include a stipulation by Vincent allowing the Discharge Revocation relief requested by Plaintiffs and be in the form attached as Exhibit "2".

(3) The Dismissal in the Divorce Proceedings shall include a permanent waiver by Joanne of the right to create and/or enforce any further Alimony Obligations against Vincent (the "Alimony Waiver") and be in the form attached as Exhibit "3"; provided further that nothing in this Agreement shall be deemed to in any manner forgive or offset any of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final. In the event the Nevada Eighth Judicial District Court shall subsequently fail to approve the stipulated Dismissal, including the Alimony Waiver, in the form attached or in another form sufficient to fully terminate all of Vincent's Alimony Obligations after the date the Court Approval and Court Determination become Final,

then this Settlement Agreement shall become null and void for all purposes and any payments or other performances made hereunder shall be promptly restored to the paying or performing party.

(4) The Alimony Appeals have both been dismissed by orders denying those appeals, from which Vincent shall not further appeal.

F. The execution, delivery, exchange and filing, as appropriate, of the Settlement Payments (and all of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final but still remain unpaid, if any), the Residual Assignment, the Dismissals and the other instruments required hereunder shall take place as soon as practical after obtaining the Final Court Approval and Court Determination in accordance with the following closing procedures:

(1) The Settling Defendants shall provide their counsel with (i) the Settlement Payments (and any other accrued but unpaid payments due under Vincent's Alimony Obligations by the date the Court Approval and Court Determination become Final) in the form of cashier's checks issued by a Las Vegas, Nevada bank payable to the order of "Tom Grimmett, Trustee" and "Shinehouse & Duesing Trust Account", as appropriate, (ii) the executed Residual assignment, and (iii) any other instruments required to be executed by the Settling Defendants.

(2) Plaintiffs shall each provide their respective counsel with any instruments required to be executed by Plaintiffs.

(3) The counsel for the parties shall meet at the offices of Shinehouse & Duesing to execute the various Dismissals on behalf of their respective clients, as appropriate (which each party hereby authorizes its respective counsel to execute) and distribute those items as follows:

(a) To counsel for Settling Defendants, the executed Dismissals for the Adversary Proceeding and the Alimony Proceedings, and any other instruments to which they are entitled.

(b) To counsel for Trustee, the cashier's check for the $40,000 Settlement Payment to him, and any other instruments to which he is entitled.

(c) To counsel for Joanne, the cashier's check for the $160,000 Settlement Payment to her (and any other accrued but unpaid payments due under Vincent's Alimony Obligations by the date the Court Approval and Court Determination become Final), the executed Residual Assignment, the executed Dismissals for the Alimony Appeals, and any other instruments to which she is entitled.

(4) Counsel for each party receiving an executed Dismissal is hereby authorized to promptly file each such Dismissal with the clerk of the appropriate court and submit an endorsed filed copy to the other counsel in that case.

G. Each party agrees to execute and deliver to each other party such additional instruments and assurances as may be reasonably requested to carry out the terms of this Agreement.

H. The Settling Defendants shall not from the date this Agreement is first signed by any of them in any manner directly or indirectly assist, or cooperate with, any of the Remaining Defendants in the Adversary Proceedings or the Rico Actions, or any other persons or entities, in connection with any matters relating thereto, including without limitation by providing any documents, information, or other assistance by the Settling Defendants or their respective related persons and entities, including especially but without limitation their current and former legal counsel, accountants, appraisers and other consultants. However, nothing in this provision shall prohibit the responsibility of the Settling Defendants and their respective related parties to comply with any subpoena, discovery request or other legal process duly issued to them by the Remaining Defendants or any others, provided that in such event the Settling Defendants and their respective related parties shall promptly provide Plaintiffs with copies of any such process and assert any relevant privileges, work product exceptions, or other exceptions to such subpoena, discovery or other legal process.

I. The Settling Defendants shall fully and completely cooperate with Plaintiffs' ongoing efforts against the Remaining Defendants in the Adversary Proceedings and the Rico Action, subject to any relevant privileges, work product exceptions, and/or other exceptions to discovery, by:

(1) Providing informal access to and copies of such additional documents and information in their possession or control as Plaintiffs, and each of them,

may determine to be appropriate in connection with the Adversary Proceeding or the Rico Actions.

(2) Appearing and testifying as a witness at trial in connection with the Adversary Proceeding or the Rico Actions pursuant to any subpoenas issued by Plaintiffs.

J. The Settling Defendants shall not take any voluntary or involuntary execution or other collection actions against, or directly or indirectly accept any payments from, (i) Patricia L. Brown, (ii) Patricia L. Brown, Limited, (iii) Beckley, Singleton, DeLanoy, Jemison, & List, Chtd., (iv) Paul Heeren, (v) Paul Heeren, MD, Ltd, or (vi) any of their respective associates, employees, shareholders, heirs, successors or assigns with respect to any matters, including without limitation any claims for relief against them until such time as Plaintiffs, and each of them, shall have first resolved all of their various claims for relief against those various named and related persons and entities, including without limitation those set forth in the Adversary Proceedings and the Rico Actions, and fully collected any resulting judgment or settlement. However, this provision shall not be deemed to prohibit the Settling Defendants from commencing any new, or continuing any existing litigation against those various named and related persons and entities through the point of obtaining final judgments.

K. The Settling Defendants shall not in any manner directly or indirectly interfere with or impair the manner in which the Trustee and Joanne may separately

determine and implement their respective rights and entitlements under this Agreement. Any rights hereunder collectively given to both Plaintiffs may be fully exercised by either Plaintiff separately or in conjunction with the other Plaintiff.

8. The effectiveness of this Agreement is condition upon:

A. Expiration of the ten day period for filing a notice of appeal as provided for in Bankruptcy rule 8002 after entry by the Debtor's Bankruptcy court of an order which does the following, (or immediately after entry of an order which denies a motion for rehearing of such an order under Bankruptcy rule 8015) (becomes "Final"):

(1) Approves the settlement and compromise contained herein pursuant to Bankruptcy rules 2002 and 9019 (the "Court Approval").

(2) Determines under the Nevada Contribution among Joint Tortfeasors Act and other comparable applicable law that this Agreement has been entered into in "good faith" (the "Court Determination") whereby:

(a) The Releases do not discharge or in any manner impair the Plaintiffs' claims for relief in the Adversary Proceedings, or any other claims, against the Remaining Defendants.

(b) The Releases discharge the Settling Defendants from contribution to any of the Remaining Defendants and the Dismissed Defendants.

(3) The taking of an appeal within the period during which an appeal may be taken from such an order shall not affect the Finality of the order unless the enforceability of the order has been expressly stayed by order of the Bankruptcy court pending such appeal.

B. The payment, execution and delivery by Settling Defendants to Plaintiffs of the Settlement Payments (and all of Vincent's Alimony Obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final but still remain unpaid, if any) along with the Residual Assignment and instruments described herein upon obtaining the Final Court Approval and Court Determination.

C. The warranties and representations contained herein are, and shall be, true and correct as of (i) the execution hereof, (ii) the Final Court Approval and Court Determination, and (iii) the payment, execution and delivery of the Settlement Payments and instruments described above.

9. The parties agree that the following Additional Provisions shall apply:

A. In the event that any section, paragraph, sentence, or clause of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or unenforceability of the remainder of this Agreement.

B. As used herein, the masculine, feminine, and neuter genders shall each include the others and the singular shall include the plural as necessary to give meaning thereto.

C. Time is of the essence herein.

D. This Agreement contains the entire understanding of the parties and there are no warranties, representations, or covenants other than those set forth herein.

E. Each party acknowledges that he has been given the full and complete opportunity to (i) read this Agreement, (ii) examine and inspect the underlying subject matter, and (iii) obtain counsel of that party's own choice prior to entering into this Agreement.

F. This Agreement may not be modified, amended, or changed, except by a writing specifying the modification, amendment, or change which is signed by all of the parties.

G. Each party agrees that this Agreement shall be construed and interpreted under the laws of the State of Nevada according to its fair meaning with equal benefit to all parties and that in the event that any legal proceedings may be required to enforce, interpret, or construe this Agreement, such proceedings shall be instituted and pursued in the Courts located in Clark County, Nevada.

H. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one instrument.

I. Each person signing this Agreement (i) warrants and represents that he has the full and complete authority to do so and (ii) shall indemnify and hold harmless each party (and the related persons and entities

of each party) from any and all claims, demands, liabilities, harm or loss (including without limitation attorneys fees and costs) arising out of or in connection with the breach by that person of this warranty and representation (which warranty, representation and indemnity shall survive the execution and performance of this Agreement).

/s/ TR Grimmett
TOM GRIMMETT, Trustee of Debtor's Bankruptcy estate and the President of Vincent Siragusa, MD, Ltd, a Nevada corporation:

JOANNE M. SIRAGUSA, individually and ex rel the Trustee in Adversary Proceeding Number 89-0068

/s/ Vincent Siragusa
VINCENT SIRAGUSA, individually and as President of V. Siragusa, MD, Chartered

ACKNOWLEDGMENTS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On June 28 , 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared ~~Tom Grimmett~~ Vincent Siragusa, known to me to be the person described

in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

/s/ Alene L. Hintz
NOTARY PUBLIC in and for
said County and State

[SEAL]
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Alene Louise Hintz
My Appointment Expires
illegible 2, 1998

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On ___, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Joanne Siragusa, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that she executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

NOTARY PUBLIC in and for
said County and State

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On July 11, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared ~~Vincent Siragusa~~ Tom R. Grimmett, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

/s/ Z. Wageman
NOTARY PUBLIC in and for
said County and State

[SEAL]
Z. Wageman
Notary Public
CLARK COUNTY
My Commission Expires
August 15, 1994

D. This Agreement contains the entire understanding of the parties and there are no warranties, representations, or covenants other than those set forth herein.

E. Each party acknowledges that he has been given the full and complete opportunity to (i) read this Agreement, (ii) examine and inspect the underlying subject matter, and (iii) obtain counsel of that party's own choice prior to entering into this Agreement.

F. This Agreement may not be modified, amended, or changed, except by a writing specifying the modification, amendment, or change which is signed by all of the parties.

G. Each party agrees that this Agreement shall be construed and interpreted under the laws of the State of Nevada according to its fair meaning with equal benefit to all parties and that in the event that any legal proceedings may be required to enforce, interpret, or construe this Agreement, such proceedings shall be instituted and pursued in the Courts located in Clark County, Nevada.

H. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one instrument.

I. Each person signing this Agreement (i) warrants and represents that he has the full and complete authority to do so and (ii) shall indemnify and hold harmless each party (and the related persons and entities of each party) from any and all claims, demands, liabilities, harm or loss (including without limitation attorneys fees and costs) arising out of or in connection with the breach by that

person of this warranty and representation (which warranty, representation and indemnity shall survive the execution and performance of this Agreement).

TOM GRIMMETT, Trustee of
Debtor's Bankruptcy estate and
the President of Vincent
Siragusa, MD, Ltd. a Nevada
corporation:

/s/ Joanne M. Siragusa
JOANNE M. SIRAGUSA,
individually and ex rel the
Trustee in Adversary
Proceeding Number 89-0068

/s/ Vincent Siragusa
VINCENT SIRAGUSA,
individually
and as President of V.
Siragusa,
MD, Chartered

ACKNOWLEDGMENTS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On June 28, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Tom Grimmett, known to me to be the person described in, and who

executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

/s/ Alene L. Hintz
NOTARY PUBLIC in and for
said County and State

[SEAL]
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Alene Louise Hintz
My Appointment Expires
illegible 2, 1998

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On July 11, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Joanne Siragusa, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

/s/ Susan K. Sincere
NOTARY PUBLIC in and for
said County and State

[SEAL]
Notary Public State of Nevada
COUNTY OF CLARK
SUSAN K. SINCERE
My Commission Expires
May 10, 1996

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On ___, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Vincent Siragusa, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

NOTARY PUBLIC in and for
said County and State

ASSIGNMENT OF DEBTOR'S RESIDUAL RIGHTS IN BANKRUPTCY ESTATE

In consideration of the mutual releases, covenants, and other undertakings set forth in that Settlement Agreement and Mutual Release between, among others, Vincent Siragusa as debtor and Joanne M. Siragusa as a creditor, Vincent Siragusa as debtor in the United States Bankruptcy Court for the District of Nevada Case Number BK-S-87-3085-LBR hereby irrevocably transfers, conveys and assigns to Joanne M. Siragusa all of his right, title and interest as debtor to receive any and all distributions from his Bankruptcy Estate, including without limitation the debtor's rights to receive any distributions under Bankruptcy Code Section 726(a)(6).

_____

VINCENT SIRAGUSA,
individually

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

On ___, 1994, before me, the undersigned Notary Public in and for said County and State, duly commissioned and sworn, personally appeared Vincent Siragusa, known to me to be the person described in, and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

_____

NOTARY PUBLIC in and for
said County and State

_____

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Attorneys for Trustee
Tom Grimmett & Vincent
Siragusa, MD, Ltd.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re: VINCENT SIRAGUSA, Debtor.	)	BK-S-87-3085-LBR Chapter 7
JOANNE M. SIRAGUSA individually and ex rel TOM GRIMMETT, Trustee, Plaintiff, v. VINCENT SIRAGUSA, et al, Defendants.	)	ADVERSARY PROCEEDING NO. S-89-0068
And Related Counter And Crossclaims	)	

TOM GRIMMETT, Trustee of the Bankruptcy Estate of VINCENT SIRAGUSA, Plaintiff, v. JOHN BOWERS; et al, Defendants.	)	ADVERSARY PROCEEDING NO. S-90-0216

STIPULATION AND ORDER FOR DISMISSAL BETWEEN (i) TRUSTEE AND JOANNE M. SIRAGUSA AND (ii) DEBTOR AND V. SIRAGUSA MD CHTD

Hearing Date: None
Hearing Time: None

STIPULATION

In accordance with the provisions of:

1. Section 7.B. of the Settlement Agreement and Mutual Release (the "Settlement Agreement") between (i) (a) Tom Grimmett as the trustee (the "Trustee") in this Chapter 7 bankruptcy case for Vincent Siragusa as debtor, (b) Vincent Siragusa, MD, Ltd, a Nevada corporation wholly owned by the Trustee, and (c) Joanne M. Siragusa, individually and ex rel the Trustee ("Joanne") as one party (collectively the "Plaintiffs") and (ii) (a) debtor and (b) V. Siragusa MD Chtd (collectively the "Debtor Defendants"); and

2. This court's Order Granting Motion for Approval of Compromise and Settlement Agreement and Making Good Faith Determination with Debtor and V. Siragusa

MD Chtd Only entered herein which has now become Final;

Plaintiffs and Debtor Defendants, and each of them, stipulate:

1. The debtor stipulates to the discharge revocation relief requested by Plaintiffs pursuant to Bankruptcy Code Section 727 in Adversary Proceeding Number 89-0068 (the "Discharge Revocation").

2. The Plaintiffs, and each of them, stipulate to dismiss with prejudice all of their other respective claims for relief in these adversary proceedings against only the Debtor Defendants, and each of them (the "Dismissals").

3. Neither the execution nor the performance of the Settlement Agreement by any party shall constitute or be deemed to be an admission of any liability, wrongdoing or impropriety on the part of that party, or any lack of merit in the claims or defenses of that party. Rather, such execution and performance are intended to in good faith compromise and fully, finally and completely resolve and settle the matters and disputes which are the subject of this Agreement. Without limiting the generality of the foregoing:

A. With respect to debtor, such execution and performance, and any Court Approval and Court Determination, of the Settlement Agreement shall not (i) constitute an admission or finding of any fraud or other wrongdoing or (ii) be used by anyone, including without limitation the Plaintiffs and the Remaining Defendants, in any judicial proceeding to support any such admission or finding.

B. With respect to Joanne, such execution and performance, and any Court Approval and Court Determination, of this Agreement shall not (i) constitute an admission or finding of any lack of fraud or other wrongdoing or (ii) be used by anyone, including without limitation the Settling and Remaining Defendants in the Adversary Proceedings, in any judicial proceeding to support any such admission or finding.

4. Each party to this stipulation shall bear his own respective attorneys fees and costs.

SHINEHOUSE & DUESING

By _____

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Attorneys for Plaintiff
Joanne M. Siragusa

ALVERSON, TAYLOR, MORTENSEN & NELSON

BY /s/ Erven T. Nelson

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Vincent Siragusa, MD, Ltd.

MARSHALL HILL CASSAE & LIPKAU

BY _____
REW GOODENOW, ESQUIRE
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Attorneys for Debtor and
V. Siragusa MD Chtd

ORDER

This court has considered the foregoing stipulation, the Settlement Agreement, and this court's Order Granting Motion for Approval of Compromise and Settlement Agreement and Making Good Faith Determination with Debtor and V. Siragusa MD Chtd Only, and for good cause shown, approves this stipulation and orders the Discharge Revocation and Dismissals specified therein as between the stipulating parties only.

Dated: ___, 1994.

_____
U.S. BANKRUPTCY JUDGE

_____

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(702) 477-7733
Attorney for Defendant

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

JOANNE M. SIRAGUSA, Plaintiff, vs. VINCENT SIRAGUSA, Defendant.	CASE NO. D. 58232 DEPT. NO. VIII DOCKET "M" DATE OF HEARING: TIME OF HEARING: ORAL ARGUMENT REQUESTED: ____yes ___x__ no

STIPULATION FOR SETTLEMENT, DISCHARGE OF ALIMONY OBLIGATIONS AND DISTRICT COURT ORDER

COME NOW, the Plaintiff, JOANNE M. SIRAGUSA, by and through her counsel, B.R. SHINEHOUSE, ESQ., of SHINEHOUSE & DUESING, and the Defendant, VINCENT SIRAGUSA, by and through his counsel, SCOTT MICHAEL CANTOR, ESQ., of GRAZIADEI & CANTOR, LTD., and hereby stipulate, as follows:

WHEREAS, on August 19, 1983, the Plaintiff and Defendant, as spouses, entered into a Property Settlement Agreement which was subsequently incorporated and

merged into a Decree of Divorce entered in this case on September 23, 1993, and

WHEREAS, the Property Settlement Agreement was amended from time to time through January, 1987, and

WHEREAS, the Defendant filed a voluntary Petition for Bankruptcy in the United States Bankruptcy Court for the District of Nevada in 1987 as case number BK-S-87-3085-LBR, and

WHEREAS, the Bankruptcy Trustee in that action and the Plaintiff herein have filed certain claims in adversary proceeding numbers 89-0068 and 90-0216 against, in and among others, the Defendant herein, and

WHEREAS, various parties to the adversary proceedings, including the Plaintiff herein and the Defendant herein, have entered into a Settlement Agreement and Mutual Release which has been approved as a good-faith settlement by the United States Bankruptcy Court and,

WHEREAS, the Settlement Agreement and Mutual Release includes a comprehensive settlement of all outstanding claims by and between the Plaintiff and the Defendant herein, including the instant case and any appeals contemplated or resulting from the recent denial of a Petition for Rehearing in the Appeal of *Siragusa vs. Siragusa*, Nevada Supreme Court case number 22043, 108 Nev. 987 (1992).

NOW THEREFORE, the parties hereto stipulate, as follows:

1. Pursuant to certain of the provisions of the Settlement Agreement and Mutual Release, the Defendant has

paid to the Plaintiff the sum of One Hundred Sixty Thousand ($160,000.00) Dollars in full and complete satisfaction of any and all unaccrued alimony payments to become due to the Plaintiff from the Defendant pursuant to the extant orders of the Eighth Judicial District Court in this case from and after the date the Approval and Determination of Good-faith Settlement of the United States Bankruptcy Court became Final.

2. Pursuant to certain of the provisions of the Settlement Agreement and Mutual Release, the Defendant has paid to the Plaintiff any and all alimony obligations which accrued prior to the date the Bankruptcy Court's Approval and Court Determination of the Good-faith Settlement became Final.

3. Pursuant to certain of the provisions of the Settlement Agreement and Mutual Release, the Plaintiff hereby releases and discharges the Defendant, now and for all times, from any further obligations for the payment of alimony to her arising out of or pursuant to that certain Property Settlement Agreement of August 19, 1983, as subsequently amended by various Stipulations through January, 1987, and pursuant to the Decree of Divorce entered in this matter on September 23, 1983, and pursuant to all subsequent amendments to the Decree of Divorce requiring the payment of additional alimony obligations.

4. That the Defendant's payment to the Plaintiff of the sums set forth herein and as more fully set forth in the Settlement Agreement and Mutual Release shall be deemed to conclude and terminate the term of alimony established by the extant orders of the Eighth Judicial

District Court and shall operate as a discharge of all other alimony obligations, except as specifically set forth in that said Agreement which provides in part:

> "The dismissal in the divorce proceeding shall include a permanent waiver by Joanne of the right to create and/or enforce any further Alimony Obligations against Vincent (the "alimony waiver") and be in the form attached as Exhibit "3"; provided further that nothing in this Agreement shall be deemed to in any manner forgive or off-set any of Vincent's alimony obligations payments which shall have accrued by the date the Court Approval and Court Determination become Final."

5. The Plaintiff and Defendant have been advised by their respective counsel of the holding of the Nevada Supreme Court in the case of *Schryver vs. Schryver,* 108 Nev. 190 (1992), that a payor spouse may not deprive a Court of jurisdiction to modify future alimony payments by making advance payments of alimony in order to prematurely conclude the term of alimony; that being aware of the holding of Nevada Supreme Court in *Schryver vs. Schryver,* supra, and cognizant of its implication, the Plaintiff waives any right to seek any additional alimony or modification of alimony provisions upon the Bankruptcy Court's Approval and Court Determination becoming final and covenants that upon that Final Approval and Court Determination, payments to her by the Defendant herein shall constitute a termination of the term of alimony and forever bar her right to create and/or enforce any further alimony obligations against the Defendant, the holding of the Nevada Supreme Court in *Schryver vs. Schryver,* supra, notwithstanding.

6. That for and in consideration of the Plaintiff's permanent waiver of her right to create and/or enforce any further alimony obligations, subject to the terms and conditions of the Settlement Agreement and Mutual Release upon the Bankruptcy Court's Approval and Court Determination becoming Final, the Defendant waives any rights of which he may be possessed to seek a Writ of Certiorari in the United States Supreme Court from the disposition of his Appeal in the case of *Siragusa vs. Siragusa,* Nevada Supreme Court case number 22043, 108 Nev. 987 (1992).

DATED this ___ day of ___, 1994.

SHINEHOUSE & DUESING

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/s/ Scott Michael Cantor
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Attorney for Defendant

ORDER

BASED upon the stipulation of the parties hereto and good cause appearing,

IT IS HEREBY ORDERED that the terms of the foregoing Stipulation be and the same are hereby approved and ratified by the Court; the terms and provisions thereof are *SO ORDERED.*

DATED this ___ day of ___, 1994.

DISTRICT JUDGE

Submitted by:

GRAZIADEI & CANTOR, LTD.

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Approved as to form & content:

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EXHIBIT "B"

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re: VINCENT SIRAGUSA, Debtor.	)	BK-S-87-3085-LBR Chapter 7
JOANNE M. SIRAGUSA individually and ex rel TOM GRIMMETT, Trustee, Plaintiff, v. VINCENT SIRAGUSA; et al, Defendants.	)	ADVERSARY PROCEEDING NO. S-89-0068
And Related Counter And Crossclaims	)	
TOM GRIMMETT, Trustee of the Bankruptcy Estate of VINCENT SIRAGUSA, Plaintiff, v. JOHN BOWERS; et al, Defendants.	)	ADVERSARY PROCEEDING NO. S-90-0216

ORDER GRANTING MOTION FOR APPROVAL OF COMPROMISE AND SETTLEMENT AGREEMENT AND MAKING GOOD FAITH DETERMINATION WITH DEBTOR DEFENDANTS ONLY

DATE: July 29, 1994
TIME: 2:00 p.m.

This court has considered (i) the papers filed in support of and in opposition to the above-named motion for approval of compromise and settlement agreement and good faith determination with debtor defendants only which was duly heard at the above time and date, (ii) the arguments advanced by counsel for the parties at that hearing, and (iii) the entire record in this bankruptcy case and the various adversary proceedings herein, and based thereon finds and orders that:

1. Neither the debtor nor any creditors of this estate have filed any objections to this motion for approval of compromise and settlement.

2. The requested approval pursuant to bankruptcy court rule 9019 is granted as the proposed compromise and settlement is fair and equitable and in the best interests of this bankruptcy estate based upon the overall facts and circumstances of this case, including without limitation the following factors which this court has especially considered for purposes of this approval:

A. The probability of success in the litigation.

B. Any difficulties to be encountered in the matter of collection.

C. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending to it.

D. The paramount interest of the creditors and a proper deference to their reasonable views.

3. The Settlement Agreement and Mutual Release attached to the above-named motion (which Agreement is herein incorporated by reference and with respect to which the following terms shall have the meanings set forth therein) was entered into by the moving parties in "good faith" within the meaning of, and otherwise in full compliance with, the Nevada Contribution Among Joint Tortfeasors Act, NRS 17.245, and other comparable applicable law in all respects.

4. The requested "good faith" determination with respect to the Agreement is made under the Nevada Contribution Among Joint Tortfeasors Act, NRS 17.245, and other comparable applicable law after first giving due consideration to all of the facts and circumstances of this bankruptcy case and the various adversary proceedings herein, the respective positions of the various parties, and the terms of that Agreement, whereby:

A. The Releases do not discharge or in any manner impair the claims for relief by the trustee or Joanne M. Siragusa in the Adversary Proceedings, or any other claims by them, against the Remaining Defendants.

B. The Releases discharge the Settling Defendants from contribution to any of the Remaining Defendants and the Dismissed Defendants in the Adversary Proceedings.

C. This court makes no determination as to the right, if any, of the Remaining Defendants to claim a reduction against the Trustee and/or Joanne M. Siragusa for the amounts provided for in and paid under the Agreement.

Dated: Aug. 4, 1994.

LINDA B. RIEGLE
U.S. BANKRUPTCY JUDGE

Submitted by:
SHINEHOUSE & DUESING

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